

## DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH

## NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code, § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption, on an emergency basis, of a new section 938 to Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Homemaker Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for homemaker services provided by qualified professionals to participants with mental retardation in the Home and Community Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). These rules also establish Medicaid reimbursement rates for homemaker services.

On February 7, 2003, a notice of emergency and proposed rulemaking was published in the *D.C. Register* (50 DCR 1235). These emergency rules amend the previously published rules by adding a section to limit the number of hours a client may receive homemaker services to ensure that total expenditures for all home and community-based services and other Medicaid services under the waiver do not exceed the amount that would be incurred by the State's Medicaid program for these individual in an institutional setting. This cost neutrality requirement is included in the Waiver application approved by the Centers for Medicare and Medicaid Services (CMS), formerly the federal Health Care Financing Administration. Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of homemaker services.

The emergency rulemaking was adopted on June 30, 2003 and will become effective one day after publication of this notice in the *D.C. Register*. The emergency rules will remain in effect for 120 days or until October 28, 2003 unless earlier superseded by another emergency rulemaking or by publication of a notice of final rulemaking in the *D.C. Register*, whichever comes first.

The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Amend Chapter 9 (Medicaid Program) of Title 29 DCMR by adding the following new section 938 to read as follows:

**SECTION 938      HOMEMAKER SERVICES**

- 938.1      Homemaker services shall be reimbursed by the Medicaid Program for each participant with mental retardation in the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.
- 938.2      Homemaker services shall consist of general household activities provided by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage the home and care for themselves or others in the home.
- 938.3      Homemaker services eligible for reimbursement shall include, but not be limited to the following activities:
- (a) Light housekeeping duties;
  - (b) Laundry;
  - (c) Essential errands; and
  - (d) Meal preparation.
- 938.4      Homemaker services shall not be reimbursed when provided by a member of the client's family or by a provider, such as a group home provider, who is otherwise responsible for the service.
- 938.5      Homemaker services shall be authorized and provided in accordance with each client's individual habilitation plan (IHP) or individual support plan (ISP).
- 938.6      Each provider of homemaker services shall:
- (a) Be a public or private agency;
  - (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for homemaker services under the Waiver;
  - (c) Maintain a copy of the most recent IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
  - (d) Ensure that each homemaker services professional is qualified and properly supervised;

- (e) Ensure that the service provided is consistent with the client's IHP or ISP;
- (f) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules; and
- (g) Provide training in infection control procedures consistent with the requirements of the Occupational Safety and Health Administration, U.S. Department of Labor as set forth in 29 CFR 1910.1030.

938.7 Each person providing homemaker services shall meet all of the following requirements:

- (a) Be at least eighteen (18) years of age;
- (b) Be acceptable to the client;
- (c) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation from a physician stating that the person is free from communicable disease;
- (d) Be able to communicate with the client;
- (e) Be able to read and write the English language;
- (f) Complete pre-service and in-service training approved by MRDDA;
- (g) Have the ability to provide homemaker services consistent with the client's IHP or ISP;
- (h) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. 14-98, D.C. Official Code § 44-551 *et seq.*);
- (i) Have a high school diploma or general educational development (GED) certificate;
- (j) Have at least one year of work experience; and
- (k) Have completed a training course for homemaker services under

the Foundation for Hospice and Homecare National Certification Program for Homemaker-Home Health Aide, with emphasis on the needs of adults and developmental disabilities.

938.9 The billable unit of service for homemaker services shall be one hour.

938.10 Homemaker services shall be reimbursed at \$12.00 per hour.

938.11 Homemaker services shall be limited to eight (8) hours per week and shall not be billed concurrently with personal care services or attendant care services.

938.99 **DEFINITIONS**

When used in this section, the following terms and phrases shall have the meanings ascribed:

Client- An individual with mental retardation who has been determined eligible to receive services under the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities.

Communicable Disease—Shall have the same meaning as set forth in section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

Individual Habilitation Plan (IHP)—The plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

Individual Support Plan (ISP)—The successor to the individual habilitation plan (IHP) as defined in the court-approved Joy Evans Exit Plan.

Comments on the proposed rules shall be submitted in writing to Wanda R. Tucker, Interim Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5<sup>th</sup> Floor, Washington, D.C. 20002, no later than thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.